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Report of the Committee on Relations with the Host Country

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Supplement No. 26 (A/59/26)

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I. Introduction

1. The Committee on Relations with the Host Country was established pursuant to General Assembly resolution 2819 (XXVI) of 15 December 1971. The General Assembly, by its resolution 58/78 of 9 December 2003, decided to include in the provisional agenda of its fifty-ninth session the item entitled "Report of the Committee on Relations with the Host Country". The present report is submitted pursuant to resolution 58/78.

2. The report is composed of four sections. The recommendations and conclusions of the Committee are contained in section IV.

II. Membership, composition, terms of reference and organization of the work of the Committee

3. The Committee is composed of 19 members, as follows:

Bulgaria	Iraq
Canada	Libyan Arab Jamahiriya
China	Malaysia
Costa Rica	Mali
Côte d'Ivoire	Russian Federation
Cuba	Senegal
Cyprus	Spain
France	United Kingdom of Great Britain and Northern Ireland
Honduras	United States of America
Hungary	

4. The Bureau of the Committee consists of the Chairman, the three Vice-Chairmen, the Rapporteur and a representative of the host country who attends Bureau meetings ex officio. During the reporting period, Andreas D. Mavroyiannis (Cyprus) continued to serve as Chairman. The representatives of Bulgaria, Canada and Côte d'Ivoire served as Vice-Chairmen, and Emilia Castro de Barish (Costa Rica) as the Rapporteur.

5. The terms of reference of the Committee were determined by the General Assembly in its resolution 2819 (XXVI). In May 1992, the Committee adopted, and in March 1994 slightly modified, a detailed list of topics for its consideration, which is set out in the annex to the present report. The Committee issued no documents during the reporting period.

6. During the period under review, the Committee held the following meetings: the 220th meeting, on 29 April 2004; the 221st meeting, on 26 July 2004; and the 222nd meeting, on 13 October 2004.

III. Topics dealt with by the Committee

A. Transportation: use of motor vehicles, parking and related matters

7. At the 220th meeting, the Chairman circulated a comprehensive database[1] setting out summaries, in all six official languages, of the submissions received by

the Secretariat from the permanent missions on their experience with the implementation of the New York Diplomatic Parking Programme.

8. The representative of the host country expressed pride in the hard work expended by the United States Mission to the United Nations in working with the host city on behalf of the United States State Department and the United Nations diplomatic community to reconcile the needs of that community and the health and safety concerns of the city. He expressed a firm belief that the New York Diplomatic Parking Programme was working well. He thanked those permanent missions that had brought issues to the attention of the host country and conveyed his gratitude to the Secretariat for compiling the database. He noted that only 23 out of the 190 permanent missions had made submissions and concluded gratefully that 88 per cent of the permanent missions were satisfied with the implementation of the Programme.

9. The representative of the Russian Federation expressed the hope that the Committee's discussion would lead to the improvement of the New York Diplomatic Parking Programme. He stated that parking was one of the core issues between the host city and the United Nations diplomatic community. He recalled that one and a half years had elapsed since the implementation of the Programme, which was elaborated without due participation of the Committee, and noted that the Committee had had sufficient experience to conduct a detailed review. He expressed his Government's view that the Programme had not achieved its stated goals and that rather than facilitating, it had in fact impeded the work of the permanent missions. He hoped that that conclusion would be heeded by the host country and city. He concluded, in that regard, that the Programme even when adopted was violating international legal principles and infringed upon universally recognized diplomatic privileges and immunities. He referred to the Legal Counsel's opinion and recalled the latter's "well-meaning" conclusion that the Programme's ultimate legality rested on the manner in which it was implemented and depended on several conditions. One of the conditions was that "if there are too many tickets issued that do not stand the test of the appeal, then it is obvious that those who have to take action through the appeals procedure are subjected to a process that may be unreasonably burdensome". In his opinion, the comprehensive database provided by the secretariat of the Committee confirmed the fact that the number of successfully contested tickets was extremely high. In this context, he stated that the implementation of the Programme produced too many errors and ran the risk of violating the host country's obligations under international law. In particular, he noted that the Russian Mission had received numerous invalid summonses. He stated that the process of verification and appeal might itself amount to "an overly burdensome" situation as described by the Legal Counsel. The review and appeal panels, which were virtually the same entity, did not comply with the stated deadlines and did not provide explicit grounds or explanations for their decisions. He also referred to violations of paragraph 20 of the Programme which guaranteed access 24 hours a day, seven days a week, to a mission's designated spaces. He stated that, despite assurances to the contrary, the resort to city jurisdiction for relief violated the permanent missions' immunity from legal process. He suggested that it was time to ask the Legal Counsel to review the implementation of the Programme with a view to determining its legality. He expressed the view that the Programme had intrinsic defects, as a result of which it could not be successfully implemented. He concluded that, despite all efforts and some minor compromises, the Programme

had not achieved its stated objectives. He proposed the establishment of a working group of interested Member States, the host country and host city authorities, to work out mutually accepted solutions. He expressed confidence that despite the practical problems, such problems could be overcome with constructive dialogue.

10. The representative of China noted the host country efforts to resolve problems with the implementation of the New York Diplomatic Parking Programme. He stated his Government's view that problems existed that violated the host country's obligations under the Headquarters Agreement and international law and reported that the Programme had had a negative impact on the functioning and security of missions. He proposed that (a) the Committee establish unimpeded diplomatic channels to address appeals against invalid summonses to obviate the need to resort to the city's jurisdiction; (b) the Committee initiate consultations with the host country regarding the number of spaces assigned to permanent missions and residences and the unauthorized use thereof; and (c) the host city undertake enhanced training of police and law enforcement authorities not only on the Programme but also on the status and treatment to be accorded to diplomats. He also noted that the unauthorized use of the permanent missions' designated spaces had, for the most part, gone unpunished and that the presence of unidentified unauthorized vehicles might pose a threat to the security of the permanent missions. He confirmed the permanent missions' obligation to respect the laws of the host country and recognized the parking and traffic problems confronting the city but concluded that efforts to resolve those problems must be consistent with international law. He expressed the hope that the Committee's efforts would lead to the improvement of the Programme.

11. The representative of Costa Rica referred to the practical and legal problems which had already been elaborated. He stated that while Costa Rica accepted the New York Diplomatic Parking Programme, in principle, its ultimate legality would depend, as indicated by the Legal Counsel, on its implementation. In that regard, he was compelled to note the high number of invalid summonses and the host city's failure to uphold respect for the permanent missions' designated spaces 24 hours a day, seven days a week. He expressed support for the Russian proposal to establish a working group and discounted the need for a legal opinion. The representative of Mali indicated that his Government was not satisfied with the implementation of the New York Diplomatic Parking Programme and expressed support for the Russian proposal in favour of establishing a working group.

12. The representative of the Travel and Transportation Service of the Secretariat outlined the Secretariat's efforts and procedures to comply with the New York Diplomatic Parking Programme in coordination with the New York city authorities. He identified a few unresolved issues involving the Programme, including the need for additional commercial parking decals, the issuance of invalid summonses and the need to regularly update the web site with regard to the status of tickets. He emphasized the Secretariat's commitment to work with the host country to ensure that the rules governing parking regulations were observed.

13. The observer of the Syrian Arab Republic referred to various problems with the implementation of the New York Diplomatic Parking Programme, including unwarranted tickets, unauthorized use of designated spaces and inadequate training of law enforcement officials in the treatment and courtesies due to diplomats. The observer of Thailand characterized the non-transferability of decals as highly

burdensome and suggested that additional designated spaces and/or decals were necessary. He also noted that the removal of reserved spaces in front of diplomatic residences was problematic given the number of official functions that take place at such residences. The observer of Nepal expressed hope that consultations between the host country, the Committee and the permanent missions would help resolve all problems with the Programme. The observer of Trinidad and Tobago called for a separate survey on the tow hotline, which she described as inadequate; characterized the city's response to the use of diplomatic space by unauthorized users as "turning a blind eye"; and confirmed the need for a public education programme. The observer of Poland also referred to the unauthorized use of designated spaces and concluded that such use impeded the work of the permanent missions and constitutes a threat to their security. The observer of Turkey stated that the Programme was not working well and expressed the view that it appeared that diplomats were being singled out for tickets and generally discriminated against. He indicated that the process of contesting invalid summonses was overly time-consuming and burdensome; that the hotline was ineffective; that the city panels often gave inconsistent replies on the same issues; that the city had failed to uphold the Missions' use of their designated spaces, especially on weekends; and that the Programme generally distracted permanent missions.

14. At the request of the Chairman, the Secretary of the Committee summarized the issues that had been raised by the members and observers who had participated in the discussion. She provided a list of issues as follows: (a) failure to uphold the availability of the designated spaces 24 hours a day, seven days a week as stipulated in the New York Diplomatic Parking Programme; (b) failure to ticket or tow unauthorized vehicles parked in the designated spaces; (c) insufficient education of law enforcement officials and of the general public of the provisions of the Programme as well as on the status and treatment to be accorded to the diplomatic community; (d) failure of review and appeals panels to uphold the deadlines provided for in the Programme; (e) failure to provide the grounds and explanations for the conclusions of such panels; (f) the invalidity/contestability of most summonses issued; and (g) problems with the operation and effectiveness of the tow hotline and web site. Outside the scope of the implementation of the Programme, she recalled that several delegations had also raised questions regarding the legality of subjecting missions to the jurisdiction of the host city; the non-transferability of the decals; the adequacy of the number of spaces and decals; and the absence of designated spaces at diplomatic residences. She reported that many delegations had protested the burdensome nature of the Programme and characterized it as an impediment to their functions and security in contravention of the host country's obligation to facilitate the work of the permanent missions.

15. The Chairman took note of the list of issues and indicated that the host country and city would need time to study the problems. He offered to take up those issues with the host country with a view to identifying solutions to the problems. Upon a request for clarification by the representative of the Russian Federation as to the status of his proposals in favour of seeking a legal opinion and/or establishing a working group, the Chairman clarified that after careful study by the host country and city and following consultations between the host country and himself, he would report to the Committee at the next meeting which could then take stock of the progress made and, if necessary, consider all options for moving forward. The representative of the Russian Federation thanked the Chairman for his clarification

and supported his proposed course of action. He also expressed the hope that the city authorities would agree to improve the New York Diplomatic Parking Programme to ensure its proper functioning and confirmed that he would revert to the idea of establishing a working group if the city did not make the necessary changes. The representative of the host country welcomed the opportunity to review and analyse the problems raised as well as the opportunity to discuss the matter with the Chairman. The representative of Costa Rica urged the Chairman to broaden the scope of his consultations with the host country beyond the specific problems identified in the Committee to include a discussion on the improvement of the Programme itself.

16. At the 221st meeting, the Chairman indicated that, as agreed at the 220th meeting, he had met with the competent city authorities to discuss the practical problems raised by permanent missions with respect to the implementation of the New York Diplomatic Parking Programme. He reported that his consultations were very constructive and that the city authorities had been forthcoming in their willingness to find solutions to the problems identified in the implementation of the Programme. He thanked the New York City Commissioner for the United Nations, Consular Corps and Protocol and her colleagues for the seriousness with which they had received Member States' concerns and the determination which they had shown in favour of correcting any discrepancies between the provisions of the Programme and the manner in which it was being implemented.

17. The representative of the United States concurred with the Chairman's appraisal of the consultations with the city authorities. Citing his own meetings with the New York City Commissioner and her colleagues, he expressed confidence in the city authorities' efforts to address the problems identified with respect to the implementation of the New York Diplomatic Parking Programme.

18. The New York City Commissioner expressed gratitude for the invitation to address the Committee. She assured the Committee that she took seriously the need to address any problems arising out of the implementation of the New York Diplomatic Parking Programme. She recalled the various successes of the New York Diplomatic Parking Programme, including (a) the highest ever number of diplomatic spaces and delivery spaces available to Permanent Missions; (b) the considerable reduction in the average number of summonses issued monthly, indicating adherence to the Programme; (c) the improvement in tow procedures, including the number of tow vehicles servicing diplomatic spaces; and (d) the marked decrease in congestion, thereby improving public safety. In connection with the ongoing dialogue and efforts, she reported that the city had undertaken the following new measures to address the problems identified with respect to the implementation of the Programme. Concerning the availability of designated spaces 24 hours a day, seven days a week, she mentioned the increased towing of unauthorized vehicles, an increase in the number of tow trucks assigned to remove unauthorized vehicles from diplomatic spaces, the patrols to issue summonses to unauthorized users, new city policies and procedures on the use of decals in other locations should a handicap licensed vehicle be parked in a diplomatic space and a new city policy on the unauthorized use of diplomatic spaces by construction companies. With respect to training, she mentioned that the city training programme included a comprehensive review of privileges and immunities to promote due respect for diplomatic status and reported that, thus far, 2,000 officers had received the training, with additional training for the seventeenth and nineteenth precincts, which handled the areas

surrounding the United Nations Headquarters. Finally, in connection with the review and appeals process, she clarified that the signing responders were merely recorders and not the judges who rendered judgements and appeals. She also noted that different judges made decisions on original dispositions and appeals. To avoid any confusion, a new policy was being instituted requiring separate recorders for the two phases. She reported that new measures were being introduced to reduce response time and to comply with the deadlines set out in the Programme and that, where such compliance was not possible, replies would be sent to the Permanent Missions concerned. Finally, she confirmed that henceforth, responses would set out an explicit explanation behind the decision on any judgement or appeal.

19. The representative of the Russian Federation recalled that the review of the implementation of the New York Diplomatic Parking Programme had been conducted in response to the recommendation of the Legal Counsel in his opinion on the legality of the Programme and as a result of the need to correct the areas of dissatisfaction with the implementation of the Programme. He expressed gratitude for the positive measures introduced by the host country and host city and indicated the need to assess the success of such measures in ameliorating the situation. He noted that the appeals process did appear to be working very precisely. He expressed the hope that the positive trends would continue steadily. His delegation continued to be concerned, however, about the lack of an accountability mechanism to ensure the city's compliance with the provisions of the Programme and the unavailability of courtesy parking for Permanent Representatives and heads of mission in the performance of their official functions. In view of the positive developments announced at the 221st meeting, he stated that consideration of his proposal in favour of establishing a working group of members of the Committee and representatives of the host country and host city could be deferred until the next meeting and possibly beyond depending on actual progress in improving the implementation of the Programme.

20. The representative of China also expressed gratitude for the efforts made by the Chairman, the host country and particularly the host city. In particular, he noted with appreciation the new measures announced by the New York City Commissioner for the United Nations, Consular Corps and Protocol. He confirmed Member States' obligation to respect the host city's traffic rules and regulations and emphasized the host country and host city's obligation to respect the diplomatic status, privileges, immunities and courtesies enjoyed by the permanent missions and their representatives. He described the latter as mutual obligations of all States and highlighted the need to avoid abusive penalties and discriminatory treatment. He concluded by praising the city's recent efforts as a good beginning to resolve both current and outstanding problems.

21. At the conclusion of the 221st meeting, the Chairman indicated that the Committee had concluded that stage of its review of the implementation of the New York Diplomatic Parking Programme and proposed that the Committee take note of the problems that had been identified and the results of the consultations that had taken place between himself and the city authorities and the host country mission. He confirmed that the foregoing, as well as the statement by the New York Commissioner and the statements made by the representatives of the Russian Federation and China, would be reflected in the recommendations to the Sixth Committee and the General Assembly. At the 222nd meeting, prior to the adoption of the report of the Committee, the representative of the Russian Federation

expressed her delegation's agreement with the recommendations and conclusions contained therein. With respect to paragraph 26 (e) of the report, she clarified the Russian Federation's position that the initial review of the implementation of the New York Diplomatic Parking Programme conducted by the Committee would continue in the future and confirmed the Russian Federation's intention to maintain the proposal of establishing a working group.

B. Acceleration of immigration and customs procedures

22. At the 220th meeting, under "other items", the observer of Turkey referred to the new customs procedures regarding the import of household effects. He indicated that two new Turkish diplomats had had their containers put on hold and X-rayed, leading to a delay beyond the grace period and thereby incurring additional storage and demurrage charges. He reported that the matter had been brought to the attention of the Office of Foreign Missions with a request for reimbursement, which had been denied. He stated that such measures were contrary to the diplomatic practice and in violation of the immunities enjoyed by diplomats, including the exemption from such detailed searches. In this connection, he referred to article 36 of the Vienna Convention on Diplomatic Relations. He explained that the host country authorities had informed his Government that they had adopted a random search policy. He put forth the view that random searches were in contradiction of the host country's international legal obligation to provide grounds for such searches and that in any event, no search could be conducted without the presence of a diplomatic agent of the country concerned. He expressed sympathy with the host country's need to enhance security but was frustrated by the excessive checks and the financial burden and delay associated therewith. He urged that, in the event that such searches were to be continued, the host country ensure that the missions affected be invited to have a diplomatic agent present, that they be exempted from any charges and that the four-day grace period be extended.

23. The representative of the host country indicated that the matter had not been brought to the attention of the United States Mission to the United Nations but rather had been raised by the Turkish Embassy with the competent authorities in Washington, D.C. As the United States Mission had not been asked to intervene, the matter would await the reply from Washington, D.C.

C. Entry visas issued by the host country

24. Also at the 220th meeting, under "other items", the representative of the Russian Federation referred to unacceptable and unjustifiable delays in the issuance of entry visas to Russian experts assigned to attend official United Nations meetings in New York and indicated that the host country was not complying with its own stated timeframes. The representative of the host country recalled that applications for such persons were handled by the consulates and embassies in the countries concerned and that unless problems or delays are brought to the attention of the United States Mission in a timely manner it would not be in a position to intervene with the competent authorities.

D. Host country travel regulations

25. At the 222nd meeting, the representative of Cuba referred generally to travel restrictions and in particular mentioned the United States Mission's denial of a Cuban delegate's request to travel beyond the 25-mile radius to attend an informal intersessional Meeting of the Special Working Group on the Crime of Aggression of the Assembly of States Parties to the Rome Statute of the International Criminal Court hosted by Princeton University. The representative of the host country reiterated that the United States regards its obligations as host country very seriously but recalled that such obligations arose only in respect of formal United Nations meetings. The representative of Cuba responded that it should not be for the host country authorities to decide who attended what meetings of the United Nations and that the host country's position violated customary diplomatic standards.

IV. Recommendations and conclusions

26. At its 222nd meeting, on 13 October 2004, the Committee approved the following recommendations and conclusions:

(a) The Committee reaffirms the Headquarters Agreement and the provisions of the 1961 Vienna Convention on Diplomatic Relations and the 1946 Convention on the Privileges and Immunities of the United Nations;

(b) Considering that the maintenance of appropriate conditions for the delegations and missions accredited to the United Nations is in the interest of the United Nations and all Member States, the Committee appreciates the efforts made by the host country to that end and anticipates that all issues raised at its meetings, including those referred to below, will be duly settled in a spirit of cooperation and in accordance with international law;

(c) The Committee notes that the observance of privileges and immunities is an issue of great importance. The Committee emphasizes the need to solve, through negotiations, problems that might arise in this regard for the normal functioning of the delegations and the missions accredited to the United Nations;

(d) Considering that the security of the missions accredited to the United Nations and the safety of their personnel are indispensable for their effective functioning, the Committee appreciates the efforts made by the host country to this end and anticipates that the host country will continue to take all measures necessary to prevent any interference with the functioning of the missions;

(e) Following the first anniversary of the implementation of the parking programme for diplomatic vehicles (A/AC.154/355, annex), noting the problems experienced by some permanent missions in connection with its implementation, the Committee conducted an initial detailed review of the implementation of the Programme, as recommended by the Legal Counsel in his opinion of 24 September 2002 (A/AC.154/358, annex), with a view to continuously ensuring the proper implementation of the Programme in a manner that is fair, non-discriminatory, effective and therefore consistent with international law and shall remain seized of the matter;

(f) The Committee notes the comments made by the host country and the representatives of the City of New York with regards to efforts made to improve the implementation of the Programme;

(g) The Committee requests the host country to continue to bring to the attention of New York City officials reports about other problems experienced by the permanent missions or their staff in order to improve the conditions for their functioning and to promote compliance with international norms concerning diplomatic privileges and immunities, and to continue to consult with the Committee on these important issues;

(h) The Committee recalls that, in accordance with paragraph 7 of General Assembly resolution 2819 (XXVI), the Committee shall consider, and advise the host country on, issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations;

(i) The Committee anticipates that the host country will enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States pursuant to article IV, section 11, of the Headquarters Agreement, including to attend official United Nations meetings;

(j) Concerning travel regulations issued by the host country with regard to personnel of certain missions and staff members of the Secretariat of certain nationalities, the Committee notes that some travel restrictions were removed during the course of the past year, and continues to urge the host country to remove the remaining travel restrictions as soon as possible; in that regard, the Committee also notes the positions of the affected Member States, of the Secretary-General and of the host country;

(k) The Committee stresses the importance of permanent missions, their personnel and Secretariat personnel meeting their financial obligations;

(l) The Committee welcomes the participation of Members of the United Nations in its work and emphasizes its importance. The Committee also welcomes the participation of representatives of the Secretariat in its work. The Committee is convinced that its important work has been strengthened by the cooperation of all concerned;

(m) The Committee wishes to reiterate its appreciation to the representative of the United States Mission in charge of host country affairs and to the Host Country Affairs Section of the United States Mission to the United Nations, as well as to those local entities, in particular the New York City Commission for the United Nations, Consular Corps and Protocol, that contribute to its efforts to help accommodate the needs, interests and requirements of the diplomatic community and to promote mutual understanding between the diplomatic community and the people of the City of New York.

Notes

[1] Member States may, at any time, obtain copies of the comprehensive database in all official languages from the secretariat of the Committee.

Annex

List of topics for consideration by the Committee

1. Question of the security of missions and the safety of their personnel.

2. Consideration of and recommendations on issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, including:

   (a) Entry visas issued by the host country;

   (b) Acceleration of immigration and customs procedures;

   (c) Exemption from taxes.

3. Responsibilities of permanent missions to the United Nations and their personnel, in particular the problem of claims of financial indebtedness and procedures to be followed with a view to resolving the issues relating thereto.

4. Housing for diplomatic personnel and for Secretariat staff.

5. Question of privileges and immunities:

   (a) Comparative study of privileges and immunities;

   (b) Convention on the Privileges and Immunities of the United Nations and other relevant instruments.

6. Host country activities: activities to assist members of the United Nations community.

7. Transportation: use of motor vehicles, parking and related matters.

8. Insurance, education and health.

9. Public relations of the United Nations community in the host city and the question of encouraging the mass media to publicize the functions and status of permanent missions to the United Nations.

10. Consideration and adoption of the report of the Committee to the General Assembly.

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